



No. 77-5090

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1977

FRANK C'NEAL ADDINGTON, Appellant

v.

THE STATE OF TEXAS

Appeal from the Supreme Court of Texas

JURISDICTIONAL STATEMENT

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No. \_\_\_\_\_  
IN THE  
SUPREME COURT OF THE UNITED STATES  
October Term, 1977

FRANK O'NEAL ADDINGTON, Appellant

v.

THE STATE OF TEXAS

Appellant Frank O'Neal Addington appeals from the judgment of the Supreme Court of Texas, which affirmed a trial court judgment sustaining, against challenge under the Constitution of The United States, the indefinite commitment of Appellant to a mental hospital by a standard proof less than beyond a reasonable doubt.

THE OPINIONS BELOW

The opinion of the Supreme Court of Texas is not yet reported. It is set forth in Appendix A to this Statement (pp. A-1-2, infra). The prior opinion of the Civil Court of Appeals of the Ninth Supreme Judicial District of Texas is reported at 546 S.W. 2d 105, and is set forth in Appendix A, pp. A-4-5, infra. The Trial Court rendered no opinion.

Appellant has set forth in Appendix B the opinions of the Supreme Court of Texas (pp. B-1-7, infra) and the Court of Civil Appeals for the Third Supreme Judicial District of Texas (pp. B-8-12, infra) in the case of The State of Texas v. Turner. That case raises the identical issue presented by this case, and the opinions below in this case were based upon opinions below in the Turner case. Turner is reported at 543 S.W. 2d 453 and 556 S.W. 2d 563.

JURISDICTION

This is an indefinite civil commitment proceeding instituted by the Appellee in the Probate Court of Galveston County, Texas, under the provisions of the Texas Mental Health Code, TEX. REV.



CIV. STAT. ANN. Art. 5547-40 et seq. (1958) (Appendix C, pp. C-1-8, *infra*) under which Appellant was indefinitely committed to a state mental hospital. The trial court construed the statute to require proof only by "clear, unequivocal and convincing evidence," and so instructed the jury. Appellant contended that the statute, if construed to require a standard of proof less than proof beyond a reasonable doubt, is invalid because it is repugnant to the due process clause of the Fourteenth Amendment to the Constitution of the United States.

Appellant appealed his commitment to the Court of Civil Appeals for the Ninth Supreme Judicial District of Texas, where he secured a ruling that the proper standard of proof under the statute and under the Fourteenth Amendment was proof beyond a reasonable doubt, that Court reversing the judgment of the trial court.

Appellee, the State of Texas, appealed the judgment of the Court of Civil Appeals to the Supreme Court of Texas. That Court, the highest in the state, construed the statute to require proof only by a preponderance of the evidence and upheld the validity of the statute as so construed, in the face of a challenge to its constitutionality as so construed. The Court applied and enforced the statute to the disadvantage of Appellant by way of affirming the trial court's order of commitment, thus depriving Appellant of his liberty.

The judgment sought to be reviewed is that of the Supreme Court of Texas entered October 12, 1977, reversing the judgment of the Court of Civil Appeals and affirming the judgment of the trial court. No motion for rehearing was filed. Southern Ry. Co. v. Clift, Ind., 43 S.Ct. 126, 260 U.S. 316, 67 L.Ed. 283 (1922). Notice of Appeal was filed in the Supreme Court of Texas on December 30, 1977.

Jurisdiction of the Supreme Court to review the decision of the Texas Supreme Court is conferred by 28 U.S.C. § 1257(2). Jurisdiction is sustained by the following cases:

STATEMENT OF THE CASE

Appellant was alleged by Appellee, the State of Texas, to be mentally ill and in need of hospitalization. Appellee brought proceedings under the Texas Mental Health Code (Appendix C, pp. C-1-8, infra) to have Appellant committed to a state mental hospital indefinitely. Trial was had before a jury which was instructed, over the objection of Appellant, to make its findings by "clear, unequivocal and convincing evidence." The jury found Appellant to be mentally ill and in need of hospitalization, and the Court entered its order committing him to Austin State Hospital for an indefinite period of time.

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Application of Gault, 87 S.Ct. 1428, 387 U.S. 1, 18 L.Ed. 2d 527 (1967).

The American Oil Company v. P.G. Neill, 85 S.Ct. 1130, 380 U.S. 451, 14 L.Ed. 2d, 1 (1965).

Jenkins v. Georgia, 94 S.Ct. 2750, 418 U.S. 153, 41 L.Ed. 2d 642 (1974).

Cox Broadcasting Corp. v. Cohn, 95 S.Ct. 1029, 420 U.S. 469, 43 L.Ed. 2d 328 (1975).

Dahnke-Walker Milling Co. v. Bondurant, 42 S.Ct. 106, 257 U.S. 282, 66 L.Ed. 239 (1922).

STATUTE INVOLVED

Pertinent portions of the Texas Mental Health Code, TEX. REV. CIV. STAT. ANN. Art. 5547 (1958) are set forth in Appendix C, pp. C-1-8, infra.

QUESTION PRESENTED

Where a state statute providing for the indefinite commitment of individuals to a mental hospital has been construed by the highest court of the state to require proof of the state's case for commitment by a standard proof of less than beyond a reasonable doubt, is such statute, on its face or as applied, repugnant to the due process requirements of the Fourteenth Amendment to the Constitution of the United States?

Appellant appealed to the Texas Court of Civil Appeals on constitutional grounds, arguing that due process requires that in cases brought under the indefinite commitment provisions of the Texas Mental Health Code, the burden be on the State to prove its case for indefinite commitment beyond a reasonable doubt. Appellant urged that the statute be construed to require proof beyond a reasonable doubt; but also argued that if the trial court had been correct in construing the statute to require less than that quantum of proof, the statute is unconstitutional. The Court of Civil Appeals held that the statute did require proof beyond a reasonable doubt, and it reversed and remanded the case to the trial court.

Appellee then filed its application for writ of error in the Supreme Court of Texas. While the Application was pending, the Texas Supreme Court decided the identical issue in The State of Texas v. Turner (Appendix B, pp. B-1-7, infra), holding that the statute requires only proof by a preponderance of evidence, and that such a standard passes Constitutional muster. The Court then simultaneously granted Appellee's application and issued its order reversing the Court of Civil Appeals and affirming the Trial Court's judgment of commitment.

#### HOW THE FEDERAL QUESTION WAS RAISED

Appellant first raised the question of the proper standard of proof for an indefinite civil commitment, and the Constitutionality thereof, in his Request for Jury Instructions (Appendix D, pp. D-1-3, infra), in which he requested the Court to instruct the jury that the burden was on the state to prove its case for the indefinite commitment of Appellant beyond a reasonable doubt.

The Trial Court denied Appellant's request and instructed the jury that the standard of proof was "clear, unequivocal and convincing evidence." (Appendix D, pp. D-4-6, infra). Appellant filed his Objections to the Charge (Appendix D, pp. D-7-9, infra), again urging the reasonable doubt standard.



"If the court's construction of section 52(b) is correct, then section 52(b) is unconstitutional, and the court erred in rendering judgment thereunder."

The Court of Civil Appeals reversed and remanded the case, agreeing with Appellant that the proper standard of proof under the statute was "beyond a reasonable doubt," and thereby upholding the validity of the statute on its face, but not as applied. (Appendix B, pp. A-4-6, *infra*).

The federal question was raised in the Supreme Court of Texas by Appellee's filing of its Application for Writ of Error, the body of which is set forth in Appendix D, pp. D-19-24, *infra*. Although under Texas law the non-appealing party is not required to file a reply to an application for writ of error, Appellant did so

The jury found Appellant to be mentally ill and the Trial Court entered its judgment of commitment (Appendix A, pp. A-7-8, *infra*). Under Texas law, Appellant was not required to file a motion for a new trial, but rather was authorized to appeal immediately and directly to the Court of Civil Appeals.

In the Court of Civil Appeals, Appellant raised the federal question by Points of Error in his brief and oral argument, that being the sole method of doing so under Texas law. The pertinent portions of the brief of Appellant are appended to this statement in Appendix D, pp. D-10-18, *infra*. The Points of Error contained therein which are in issue in this Court are set forth as follows:

"ONE

"Due Process of law is required in a civil commitment proceeding; and the Trial Court's interpretation of section 52(b) of the Texas Mental Health Code denied Appellant due process of law by refusing him those minimum findings that due process requires for a deprivation of liberty.

" . . . .

"SUBPOINT C

"The Court failed to instruct the jury that the burden of proof was on Appellee to prove beyond a reasonable doubt that Appellant requires hospitalization in a mental hospital for his own welfare and protection or the protection of others.



(Appendix D, pp. D-25-28, *infra*). The Court of Civil Appeals had construed the statute so as to make it valid under the Constitution. Appellee urged in his application to the Texas Supreme Court that such a construction was not required by due process. Appellant contended in his reply that the Court of Civil Appeals had correctly construed the statute in view of due process requirements.

While Appellee's Application for Writ of Error was still pending in the Texas Supreme Court, that Court decided in the Turner case, *supra*, that the proper standard of proof under the Texas Mental Health Code's indefinite commitment provisions was that of a preponderance of the evidence (Appendix B, pp. B-1-7, *infra*). Accordingly, the Court granted Appellee's application, and without briefs or oral argument, simultaneously reversed the Court of Civil Appeals and affirmed the Trial Court's judgment. The Court thereby construed the state statute in such a manner as to render it unconstitutional on its face, but upheld its validity as so construed in the face of a constitutional challenge. It then applied and enforced the statute, to the disadvantage of appellant. Cf. *Dahnke-Walker Milling Co., v. Bondurant*, 42 S.Ct. 106, 108; 257, U.S. 282, 290; 66 L.Ed. 239 (1922).

#### THE QUESTION IS SUBSTANTIAL

The question of the constitutionally required standard of proof for an indefinite civil commitment has never been decided by this Court. It is a question of the struggle between the power of the state and the freedom of the individual, and, as such, is a question of great public importance. The recent upsurge in litigation and legislative enactment on the subject of the rights of the individual faced with civil commitment bears witness to widespread concern with this question, and to the need for an authoritative statement from the highest court of the land.

The question of standard of proof is not a question of whether due process is required in a civil commitment, but rather

a question of the nature and extent of the impact of due process on civil commitment proceedings. The debate in legislative chambers and courts of law across the nation has been on the one hand that the loss of freedom occasioned by a civil commitment manifests such a deprivation of liberty that the due process safeguards traditionally reserved for criminal proceedings must apply; and, on the other hand that the civil nature of the proceedings together with the beneficent state purpose renders unnecessary such stringent constitutional safeguards.

This Court has never passed upon the applicability of the requirements of Gault and Winship to civil commitment proceedings. The Texas Supreme Court, in determining whether reasonable doubt was required for indefinite civil commitments, found several distinctions between criminal proceedings and civil commitment proceedings which it used to justify the use of a lesser standard: 1) that the patient has the right to treatment, to periodic review of his mental condition, and to release when he is no longer dangerous; 2) that the determination of future conduct and needs significantly differs from the retroactive assessment of conduct, the inexactitude of the psychiatric science rendering the former more difficult; and 3) that the ability of the state to act in

parens patriae for the mentally ill would be so impaired by the use of the reasonable doubt standard that the use of a lesser standard would be justified (Appendix A, pp. A-1-2, Appendix B, pp. B-6-7, *infra*). Accordingly, the Texas Supreme Court ruled that it would require for indefinite civil commitments only proof by a preponderance of the evidence, the lowest standard of proof known in our jurisprudence.

1. Appellant answers that this Court has yet to rule on the requirement of dangerousness as a standard for either commitment or release from commitment, nor has it ruled on the right to treatment of persons who are deemed dangerous. The Texas Supreme Court has never directly ruled on these issues either, and only the right to periodic review is found in the Texas statutes. Consequently, these distinctions, though relied on by the Texas Supreme Court, cannot justify the requirement of less proof than beyond a reasonable doubt in indefinite civil commitment proceedings.

2. Appellant agrees that future and retroactive determinations differ significantly. Appellant urges, however, that the vagaries inherent in predicting the future render it all the more necessary that a high standard of proof be exacted before incarcerating a person on the basis of a prediction on his future behavior. In agreement with this reasoning, the Court of Civil Appeals in Turner, *supra*, wrote: "It occurs to us that because psychology and psychiatry are not exact sciences, greater care should be exercised in indefinite commitments, and accordingly, a stricter burden of proof should be required of the State." (Appendix B, p. B-11, *infra*).

3. In Winship, *supra*, this Court expressly rejected "beneficent state purposes" as a rationale for requiring less than proof beyond a reasonable doubt in juvenile delinquency proceedings. "Civil labels and good intentions do not themselves obviate the need for criminal due process safeguards." Winship, *supra*, at 365-6, citing Gault, *supra*, at 36.



The Texas Supreme Court did not attempt to justify, in light of Winship and Gault its use of the beneficent-state-purpose rationale for civil commitments. It seems clear, however, that this rationale is no more justifiable a basis for less than criminal due process safeguards in civil commitments than it is in juvenile proceedings or in criminal proceedings.

It matters not whether the proceedings be labelled "civil" or "criminal" or whether the subject matter be mental instability or juvenile delinquency. It is the likelihood of involuntary incarceration--whether for punishment as an adult for a criminal, rehabilitation as a juvenile for delinquency, or treatment and training as a feeble-minded or mental incompetent--which commands observance of the constitutional safeguards of due process. Where, as in both proceedings for juveniles and mentally deficient persons, the state undertakes to act in *parens patriae*, it has the inescapable duty to vouchsafe due process...

Heryford v. Parker, 396 F.2d 393 (10th Cir. 1968).

Furthermore, this Court in Winship found that use of the reasonable doubt standard would not thwart the beneficent state purposes manifested in juvenile delinquency proceedings. *Id.*, 367. Likewise, Appellant argues that neither will the beneficent state purposes of civil commitment be thwarted by use of the reasonable doubt standard. The important concern is that those purposes--commitment for the benefit of the patient and of society--not be brought to bear against a person not actually in need of commitment. That concern may be served only by use of the reasonable doubt standard.

Accordingly, large numbers of courts across the nation have ruled that due process requires the standard of proof beyond a reasonable doubt for civil commitments. Among them are In re Ballay, 482 F.2d 648 (D.C. Cir. 1973); Suzuki v. Quisenberry, 411 F. Supp. 113 (D.C. Hawaii 1976); Lessard v. Schmidt, 346 F. Supp. 1078 (E.D. Wisc. 1972), vacated and remanded, 414 U.S. 473 (1974), on remand 379 F. Supp. 1376 (1974), vacated and remanded 421 U.S. 957 (1975); Denton v. Commonwealth, 365 S.W. 2d 681 (Ky. 1964); Ex Parte Perry, 43A. 2d 885 (N.J. 1945); Matter of Alexander, 554 P. 2d 524 (Ore. Ct. App. 1976).



The reasoning is clear in these cases that because a person being committed may be forever deprived of his personal liberty, because social and economic stigmas attach to one who has been involuntarily committed as a mental patient, and because the needs to be served by commitment are necessarily speculative, due process requires an extremely cautious approach to the determination that commitment is justified. There is no rational basis for a rule that would require less caution in an indefinite civil commitment than in a criminal or juvenile proceeding.

The possibility of unnecessary and unjustified deprivation of personal liberty is the crux of the question brought forward in this appeal. The value traditionally placed on individual freedom in our society renders the question one of substantial and urgent importance.

#### CONCLUSION

For the reasons stated, Appellant respectfully submits that the question presented in this appeal is so substantial as to require plenary consideration, with brief on the merits and oral argument, for its resolution.

Respectfully submitted,

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